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File No. O. Misc. /47

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Legal DEPARTMENT

BRANCH

Subject:—

Miscellaneous opinions

given in the year 1947

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2.	O.No. 10398/30-10-47	(1) Whether by marriage contracted among Mohamedans of British India the wife has the right of moiety in the estate, when the husband alone brought the property to the estate; and (2) If in the affirmative, whether by the death of the ~~wife~~ husband the children of the married couple have a right to succeed to the moiety to which the wife became entitled by marriage	3-4

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R.L.A.

Guides and Manuals explaining Government's policy in relation to any enactment or containing detailed instructions to its officers for carrying out its provisions stand on an entirely different footing from official answers to queries addressed by Private individuals involving problems of interpretation as distinguished from problems of mere policy. Private individuals cannot always be trusted to present all relevant facts; we have also no guarantee of the auccuracy of the facts actually stated. Any reply given in such circumstances must necessarily remain incomplete and hypothetical. It is undesirable that such replies should be cited as the authoritative expression of Government's opinion, bearing further the imprimatur of their Law officers. It would be impossible in practice to prevent the use of such replies by the individuals concerned for their private ends in judicial or administrative proceedings. No discretion would then be left to the administrative officers like mamlatdars and other exercising judicial functions; and the subordinate judiciary, though not strictly bound, may feel disinclined to depart from the official view. I may add that the Chairman appointed under the B.A.D.R. Act often experienced this difficulty in relation to the instructions issued by the R.D. The issue between private indivuduals (as e.g. tenant and a landlord or a debtor and a creditor) ought not to be pre-judged by what would virtually

be executive instructions, but must be left to adjudication by a duly constituted judicial authority; and Government should be content to take suitable corrective action after the judicial pronouncement is made.

2. I quite appreciate that it may be necessary to explain the policy of any law to a particular class like tenants or debtors for whose benefit it was enacted. It may even be necessary to help them in solving their parctical difficulties under such law. What purpose can be best served by providing free or cheap legal assistance for them as was done for backward classes in some districts under the B.A.D.R. Act. Queries directed to Government may then be referred to such legal assistants for advice with a view to practical action. It is far better to give such Material help in concrete cases than to publish official replies of general nature on hypothetical case which are likely to be misunderstood and misused. I submit, therefore, that Government should not undertake to give legal advice to private individuals on questions of interpretations of statutes either through their Department or through the Parliamentary Secretaries.

3. There is, of course, nothing to prevent Parliamentary Secretaries from answering in their private capacity queries addressed to Government; as in truth they are liaison officers between the Members of the Legislature and the Public on the one hand and Government on the other.

O.C.

Mjr

The questions for R.L.A's consideration are:-

Rights of a wife under Muslim Law in India.

(1) Whether by marriage contracted among Mohamedans of British India the wife has the right of moiety in the estate, when the husband alone brought the property to the estate; and

(2) If in the affirmative, whether by the death of the wife the children of the married couple have a right to succed to the moiety to which the wife became entitled by marriage.

Among the Muslims the legal effects of a contract of marriage, inter alia are:-

(1) The husband is obliged to give mahr to the wife: Under the Hanafi Law even though she has expressly agreed to marry without Mahr.

(2) The wife becomes entitled to maintenance from the husband.

(3) Mutual rights of inheritance become established (Tyabji pg 108)

Under the Hanafi or the Shia law the wife is entitled to 1/8th share if there are agnatic descendants and to 1/4th if there is no agnatic descendant. But the rights of inheritance arise only after the death of the propositus; no person is the heir of a living Muslim (Tyabji p. 840). The wife's right to a share will hence only arise if she survivers her husband. Till that time, the rights ~~if any~~ which she can immediately enforce are the right to Mahr and to the maintenance. Beyong this she cannot lay any claim to her husband's property. This being the position question (2) does not survive.

P. M. Lad.
Sd/- 28/10
O.C.

Remembrancer of Legal Affairs.

U.R. to P.&.S.D. No. 10398

dated the 30th October 1947

Mjr/9/5

4 C.